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Attorneys for Defendant and Counterclaimant
SENORX, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION and
HOLOGIC L.P.,

Plaintiffs,

v.

SENORX, INC.,

Defendant.

SENORX, INC.,

Counterclaimant,

v.

HOLOGIC, INC., CYTYC CORPORATION and
HOLOGIC L.P.,

Counterdefendants.

Case No. C-08-00133 RMW (RS)

**DEFENDANT AND
COUNTERCLAIMANT SENORX,
INC.'S OPPOSITION TO
PLAINTIFFS' ADMINISTRATIVE
MOTION TO SHORTEN TIME ON
PLAINTIFFS' MOTION TO
COMPEL RESPONSES TO CERTAIN
INTERROGATORIES**

Date: No hearing requested
Judge: Hon. Richard Seeborg

Pursuant to Civil Local Rule 6-3(c), Defendant and Counterclaimant SenoRx, Inc. (“SenoRx”) opposes Plaintiffs Hologic, Inc., Cytac Corp., and Hologic L.P.’s (collectively, “Hologic” or “Plaintiffs”) Administrative Motion To Shorten Time on Plaintiffs’ Motion To Compel Responses to Certain Interrogatories (“Motion to Compel”).

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs ask the Court to shorten to 2 days the time SenoRx has to respond to Plaintiffs’ Motion to Compel responses to several contention interrogatories.¹ Pursuant to Civil Local Rule 6-3(a)(3), however, Plaintiffs must “[i]dentif[y] the substantial harm or prejudice that would occur if the Court did not change the time” for SenoRx to respond to Plaintiffs’ Motion to Compel. Plaintiffs cannot satisfy that standard for at least two reasons.

First, Plaintiffs are seeking Court intervention to require SenoRx to file its response to Plaintiffs’ Motion to Compel two business days earlier than the date already agreed to by SenoRx. On Wednesday, March 20, SenoRx had agreed to file its response to Plaintiffs’ Motion to Compel on Tuesday, March 25, 2008 – two business days after the deadline now proposed by Plaintiffs. Declaration of Natalie J. Morgan (“Morgan Decl.”) at ¶3. To further expedite the Court’s consideration of the Motion to Compel, SenoRx agreed to “dispens[e] with the requirement of a hearing if Hologic were willing to waive the filing of a reply, which Hologic is.” Docket # 46 at 4. Consequently, Civil Local Rule 6-3(a)(3) requires Plaintiffs to identify the “substantial harm or prejudice that would occur” if SenoRx files its response to Plaintiffs’ Motion to Compel on Tuesday, March 25, 2008 rather than on Friday, March 21, 2008. *Id.* As to that narrow issue, Plaintiffs do not – and cannot – demonstrate they will be substantially harmed or prejudiced before the April 21, 2008 preliminary injunction hearing.²

¹ Implicit within Plaintiffs’ request is the notion that SenoRx should not receive up to three days to respond to Plaintiffs’ Administrative Motion To Shorten Time on Plaintiffs’ Motion To Compel Responses to Certain Interrogatories as contemplated by Civil Local Rule 6-3(c).

² Plaintiffs’ argument that they “must have SenoRx’s answers to its Interrogatories” by Monday, March 24 or Tuesday, March 25, 2008 for a 30(b)(6) deposition is a moot point. The 30(b)(6) deposition cannot take place on either of these dates. The first available date for the 30(b)(6) deposition to proceed is April 3rd.

1 Second, a time limit of only two days does not provide SenoRx with sufficient time to
 2 meaningfully respond to Plaintiffs' Motion to Compel. *See, e.g., S.E.C. v. Bilzerian*, NO. CIV.
 3 89-1854(RCL), 2001 WL 1801158, at *1 (D.D.C. Jun. 15, 2001) (denying request that SEC and
 4 be given only two days to respond to motion for immediate release). Plaintiffs seeks to compel
 5 responses to contention interrogatories seeking, inter alia,

- 6 (a) the basis for any contention that claim 1 of the '142 patent or claim 36 of the
- 7 '204 is invalid or unenforceable (including, but not limited to, an element-by-
- 8 element comparison of any allegedly invalidating prior art to each asserted claim);
- 9 (b) the basis for any contention that SenoRx does not infringe claim 1 of the '142
- 10 patent or claim 36 of the '204 (including, but not limited to, an element-by-
- 11 element comparison of how the Contura differs from each asserted claim);
- 12 (c) an identification of all documents upon which SenoRx intends to rely to
- 13 support these contentions; and
- 14 (d) an identification of all persons with knowledge concerning these contentions.

15 Docket # 44 at 4.

16 In deciding Plaintiffs' motion, SenoRx will have to brief, and the Court will likely have to
 17 decide a number of issues, including (1) whether Plaintiffs' contention interrogatories are
 18 premature, seek impermissible legal conclusions, invade work-product protections, or are
 19 otherwise objectionable (*See* Docket # 44 at 6; Morgan Decl. at ¶4) and (2) whether a protective
 20 order is necessary to preserve objections to contention interrogatories. *See id.* SenoRx believes
 21 this second issue may raise a matter of first impression for this Court. Consequently, SenoRx
 22 respectfully requests more than two days to address these issues, especially where, as here, there
 23 will be no oral argument on Plaintiffs' Motion to Compel.

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CONCLUSION

For the foregoing reasons, SenoRx respectfully requests that this Court deny Plaintiffs' Motion to Shorten Time on Plaintiffs' Motion to Compel Responses to Certain Interrogatories.

Dated: March 20, 2008

Respectfully submitted,

By: s/F.T. Alexandra Mahaney

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Attorneys for Defendant and Counterclaimant
SENORX, INC.

CERTIFICATE OF SERVICE

U.S. District Court, Northern District of California,
Hologic, Inc. et al. v. SenoRx, Inc.
Case No. C-08-0133 RMW

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On March 20, 2008, I served a copy(ies) of the following document(s):

**DEFENDANT AND COUNTERCLAIMANT SENORX, INC.'S OPPOSITION TO
PLAINTIFFS' ADMINISTRATIVE MOTION TO SHORTEN TIME ON PLAINTIFFS'
MOTION TO COMPEL RESPONSES TO CERTAIN INTERROGATORIES**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
Katharine L. Altemus (altemusk@howrey.com)	HOLOGIC, INC. CYTYC
HOWREY LLP	CORPORATION and
1950 University Avenue, 4th Floor	HOLOGIC LP
East Palo Alto, CA 94303	
Telephone: (650) 798-3500	
Facsimile: (650) 798-3600	

Matthew Wolf (wolfm@howrey.com)	Attorneys for Plaintiffs
Marc Cohn (cohnm@howrey.com)	HOLOGIC, INC. CYTYC
HOWREY LLP	CORPORATION and
1229 Pennsylvania Avenue, NW	HOLOGIC LP
Washington, DC 20004	
Telephone: (202) 783-0800	
Facsimile: (202) 383-6610	

☐ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☒ (BY ELECTRONIC MAIL) I caused such document(s) to be sent via electronic mail (email) to the above listed names and email addresses.

☐ (BY PERSONAL SERVICE) I caused to be delivered by hand to the addressee(s) noted above. I delivered to an authorized courier or driver to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for

1 overnight delivery, said practice being that, in the ordinary course of business,
2 correspondence for overnight delivery is deposited with delivery fees paid or provided for
at the carrier's express service offices for next-day delivery the same day as the
correspondence is placed for collection.

3 ☐ (BY FACSIMILE) I caused to be transmitted by facsimile machine (number of sending
4 facsimile machine is (858) 350-2399 at the time stated on the attached transmission
report(s) by sending the documents(s) to (see above). The facsimile transmission(s)
5 was/were reported as complete and without error.

6 ☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case
Management/Electronic Case File system with the U.S. District Court for the Northern
District of California.

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8 I declare under penalty of perjury under the laws of the United States that the above is true
and correct, and that this declaration was executed on March 20, 2008.

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Kirsten Blue

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UNITED STATES DISTRICT COURT
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 SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION and)
 HOLOGIC L.P.,)
 Plaintiffs,)
 v.)
 SENORX, INC.,)
 Defendant.)

SENORX, INC.,)
 Counterclaimant,)
 v.)
 HOLOGIC, INC., CYTYC CORPORATION and)
 HOLOGIC L.P.,)
 Counterdefendants.)

Case No. C-08-00133 RMW (RS)

DECLARATION OF NATALIE J. MORGAN IN SUPPORT OF DEFENDANT AND COUNTERCLAIMANT SENORX, INC.'S OPPOSITION TO PLAINTIFFS' ADMINISTRATIVE MOTION TO SHORTEN TIME ON PLAINTIFFS' MOTION TO COMPEL RESPONSES TO CERTAIN INTERROGATORIES

Date: No hearing requested
 Judge: Hon. Richard Seeborg

1 I, Natalie J. Morgan, declare:

2 1. I am an attorney admitted to practice law in California, and am admitted before
3 this court in the above-entitled action. I am an associate of the law firm Wilson, Sonsini,
4 Goodrich & Rosati, attorneys for Defendants and Counterclaimant SenoRx, Inc.

5 2. I have personal knowledge of the facts stated herein, and if called upon to testify
6 thereto as a witness, I could and would do so.

7 3. On Wednesday, March 20, 2008, SenoRx agreed to file its opposition to
8 Plaintiffs' anticipated motion to compel on Tuesday, March 25, 2008. I conveyed this agreement
9 early Wednesday morning to counsel for Plaintiffs.

10 4. Plaintiffs' interrogatories were objectionable on a number of grounds including,
11 but not limited to, that they are premature, seek impermissible legal conclusions, and invade
12 work-product protections. These objections would each need to be resolved.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed this 20th day of March, 2008, at San Diego, California.

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17 s/Natalie J. Morgan
18 Natalie J. Morgan
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CERTIFICATE OF SERVICE
U.S. District Court, Northern District of California,
Hologic, Inc. et al. v. SenoRx, Inc.
Case No. C-08-0133 RMW

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

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District of California.

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9 and correct, and that this declaration was executed on March 20, 2008.

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Kirsten Blue